

Cross Pointe Paper Corporation and United Paperworkers International Union, AFL-CIO, CLC.
Case 13-CA-33121

May 22, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge and amended charge filed on January 23 and March 9, 1995, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on March 23, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's requests to bargain and to furnish necessary and relevant information following the Union's certification in Case 13-RC-18774. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and asserting affirmative defenses.

On April 24, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On April 27, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 11, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the Union's certification on the basis of its arguments in support of its objections to conduct alleged to have affected the results of the election in the representation proceeding. In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant to its duties as the exclusive bargaining representative of the unit.¹

¹ The Respondent's answer also asserts as affirmative defenses, inter alia, that the allegations of the complaint are barred by Sec. 10(b) of the Act to the extent they assert unfair labor practices occurring over 6 months prior to the filing of a valid charge, and that the complaint is also barred by the doctrines of laches and estoppel. We find that neither of these defenses raises an issue requiring a hearing in this matter. The Respondent's answer admits that the original charge in this case was filed on January 23, 1995, and served on the Respondent on January 24, 1995, less than 2 weeks after the Respondent's admitted refusal to bargain and to furnish information requested by the Union, and the complaint clearly alleges a violation only since the date of the Respondent's refusal. The com-

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).³

We also find that there are no factual issues warranting a hearing regarding the Union's request for information. The Union requested the Respondent to furnish it with the following information:

- (1) a census of all employees, including name, job classification, rate of pay, date of hire, date of birth, gender and marital status;
- (2) a current copy of employees' handbook outlining terms and conditions of employment, including holiday and vacation benefits, shift differential and other benefits or terms and conditions of employment;
- (3) copies of plan documents and summary plan descriptions of any pension plan, 401(k) plan, group medical insurance plan, life insurance benefit, accidental death and dismemberment benefit, salary continuation benefit, including sickness and accident benefits;
- (4) an itemized cost of each benefit per employee as described in paragraph 2. Where applicable, such as medical care, provide cost for employee and dependent coverage;
- (5) the last date the employees received a wage increase and the amount of such wage increase. If this wage increase was not the same for all employees, an itemized list of the employees' names, date of hire and the amount of the wage increase they received, and when they received such increase;

plaint's allegations, therefore, are clearly not barred by the 6-month limitation period set forth in Sec. 10(b) of the Act. As for the Respondent's assertion that the complaint is also barred by the doctrines of laches and estoppel, the Respondent fails to explain how these doctrines have any relevance to this proceeding or excuse its admitted refusal to bargain with the Union. In these circumstances, we find the Respondent's assertion insufficient to warrant denial of the General Counsel's motion. See *Circus Circus Hotel*, 316 NLRB 477 fn. 1 (1995).

² The Board's decision overruling the Respondent's election objections is published at 315 NLRB 714 (1994). (Members Stephens and Devaney; Member Cohen dissenting in part.)

³ In the underlying representation case, Member Cohen concluded that a hearing was necessary to resolve the issues raised by the Respondent's Objection 5. Consistent with this view, Member Cohen would not have certified the Union and thus does not join in finding that the Respondent has violated Sec. 8(a)(5) and (1) of the Act.

(6) the average annual earnings per employee and the average number of employees employed during the same period;

(7) the average annual number of straight time hours worked during the same period, and the average number of overtime hours worked per employee;

(8) if not provided for in any of the information requested, a listing of all fringe benefits and a brief description of each benefit, including any bonuses such as productivity or attendance bonus, etc.;

(9) the policy and practice the Company follows in the payment of overtime and premium pay, including, but not limited to premium pay for working on a holiday, Saturdays, Sundays, over 8 hours a day, 40 hours a week, etc.;

(10) the Company's practice and policy relative to shift scheduling starting and quitting times, i.e. when the day shift starts and stops, etc.;

(11) the Company's policy and practice relevant to employee committees, i.e. safety committees, quality committees, team committees, or any other type of employee participation committee. Do such committees exist? Who are the employees on such committees and how were they selected?;

(12) the Company's policy and practice relevant to the beginning and ending of the work week and pay periods; and

(13) the Company's practice and policy relative to employee promotions or filling of vacancies, i.e. shift preference, job bidding or any other formal or informal arrangement for employees to move from one job to another, or to receive a promotion or from one shift to another.

It is well established that such employee wage and employment information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982), and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in West Chicago, Illinois, has been engaged in the business of sheeting and distributing paper. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its West Chicago, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer

engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held November 4, 1993, the Union was certified on January 9, 1995,⁵ as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance and warehouse employees employed by the Respondent at its facilities currently located at 1601 Hawthorne, 1701 Hawthorne, 1111 Harvester Lane, West Chicago, IL 60185; but excluding all office clerical employees, all outside temporary employees, Team Leaders, sample room employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About January 6, 1995, the Union, by letter, requested the Respondent to bargain and to furnish information that is necessary and relevant to the Union's role as the exclusive bargaining representative of the unit employees, and since January 13, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after January 13, 1995, to bargain with and furnish information to the Union which is relevant and necessary to its role as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to

⁴In its answer, the Respondent states that it is without knowledge sufficient to admit or deny the allegation that the Union is a labor organization within the meaning of Sec. 2(5) of the Act. By entering into a Stipulated Election Agreement, however, the Respondent effectively agreed that the Union is a labor organization. Accordingly, the Respondent is precluded from raising an issue as to the Union's labor organization status in the instant proceeding. See *Biewer Wisconsin Sawmill*, 306 NLRB 732 fn.1 (1992).

⁵A corrected certification issued on April 7, 1995.

cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Cross Pointe Paper Corporation, West Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Paper Workers International Union, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance and warehouse employees employed by the Respondent at its facilities currently located at 1601 Hawthorne, 1701 Hawthorne, 1111 Harvester Lane, West Chicago, IL 60185; but excluding all office clerical employees, all outside temporary employees, Team Leaders, sample room employees, guards and supervisors as defined in the Act, and all other employees.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) Post at its facilities in West Chicago, Illinois, copies of the attached notice marked "Appendix."⁶

⁶If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the

Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Paper Workers International Union, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to the Union's role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance and warehouse employees employed by us at our facilities currently located at 1601 Hawthorne, 1701 Hawthorne, 1111 Harvester Lane, West Chicago, IL 60185; but excluding all office clerical employees, all outside temporary employees, Team Leaders, sample room employees, guards and supervisors as defined in the Act, and all other employees.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

CROSS POINTE PAPER CORPORATION